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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,819	07/03/2003	Kirkor Sirinyan	LEA 31923 C2	6852
71285 7590 06/17/2008 BAYER HEALTHCARE LLC P.O. BOX 390 SHAWNEE MISSION, KS 66201				
EXAMINER				
PESELEV, ELLI				
ART UNIT		PAPER NUMBER		
1623				
MAIL DATE		DELIVERY MODE		
06/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/613,819

Applicant(s)

SIRINYAN ET AL.

Examiner

Ellie Peselev

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mencke et al (U.S. Patent No. 5,712,295) in combination with Mencke et al (WO 96/38165).

Mencke et al (U.S. Patent No. 5,712,295) discloses compositions comprising agonists and antagonists of the nicotinic acetyl-choline receptors for combating endoparasites.

Mencke et al (WO 96/38165) disclose compositions comprising avermectins or milbemycins, including moxidectin and ivermectin, for combating endoparasites.

"It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be useful for the very same purpose... [T]he idea of combining them flows from their having been individually taught in the prior art". In re Kerhoven 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA).

Applicant's arguments filed December 12, 2007 have been considered but have not been found persuasive.

Applicant contends that the claimed composition is effective for controlling both endoparasites and ectoparasites on animals.while the cited prior art discloses compounds useful for combatinf endoparasites. This argument has not been found persuasive since the present claims are directed to a composition comprising two compounds, each of which is known to be useful in combating endoparasites. Note that motivation for combining two known compounds, does not have to be the same as the motivation used by applicant.

Further, in response to applicant's argument that there is no specific suggestion or teaching in the references to combine prior art, note that KSR forecloses the argument that a specific reaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d at 1396).

Further, applicant contends that the data set forth in Examples in the specification in the declaration submitted shows the compositions having ectoparasitic activity, not disclosed by the cited prior art. With respect to the data set forth in the specification, said data is limited to a composition of imidacloprid and ivermectin. Claims 2-6 are not limited to a combination of imidacloprid and ivermectin i.e. the data set forth in the specification is not commensurate with the full scope of the claimed invention as set forth in claims 2-6.

With respect to claim 7, said claims is not limited to any amounts of the active ingredients and it cannot be ascertained from the data presented, that a combination of the two compounds in any amounts or proportions will produce an unexpected result.

The declaration filed December 12, 2007 has also been considered. The declaration refers to Attachment 1 containing data. However, no such Attachment has been found.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (571) 272-0659. The examiner can normally be reached on 8.00-4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Wilson can be reached on (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elli Peselev

/Elli Peselev/

Application/Control Number: 10/613,819

Page 5

Art Unit: 1623

Primary Examiner, Art Unit 1623